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Health and Welfare

Health and Welfare; community care facilities—group homes for children

Health and Safety Code § 1530.8 (new); Welfare and Institutions Code §§ 319.2, 11467.1 (new).

AB 1197 (Bates); 1993 STAT. Ch. 1088

Welfare and Institutions Code § 361.2 (amended).

AB 2129 (Archie-Hudson); 1993 STAT. Ch. 1089

Existing law, the Community Care Facilities Act (Act),¹ requires the licensing and regulation of community care facilities² and provides that any person who violates the Act or who willfully or repeatedly violates any rule or regulation under the Act is guilty of a misdemeanor.³

Chapter 1088 requires the State Department of Social Services (Department)⁴ to adopt regulations for community care facilities licensed as group homes and temporary shelter care facilities⁵ that care for

1. See CAL. HEALTH & SAFETY CODE §§ 1500-1519.5 (West 1990 & Supp. 1993) (setting forth the provisions of the California Community Care Service Act).

2. See *id.* § 1502(a) (West Supp. 1993) (defining community care facility).

3. *Id.* § 1508 (West 1992 & Supp. 1993); see *id.* §§ 1530-1539 (West 1992) (establishing rules and regulations for community care facilities); *id.* § 1540 (West 1990) (establishing crime and penalty for the violation of the California Community Care Service Act or its regulations).

4. See CAL. WELF. & INST. CODE § 10550 (West 1991) (creating the State Department of Social Services).

5. See *id.* § 1530.8(c) (enacted by Chapter 1088) (defining temporary shelter care facility as a 24-hour facility, owned and operated by the county, which provides short-term residential care and supervision for dependent children under 18 years of age who have been removed from their homes as a result of abuse or neglect); cf. ALA. CODE § 12-15-70 (1986) (stating that the court may grant authority to order emergency medical care to a child in temporary shelter care); IDAHO CODE § 16-1614(a) (Supp. 1993) (establishing procedures for a child's release hearing from shelter care); *id.* § 56-204B (1986) (providing temporary shelter care for certain children); MASS. GEN. LAWS ANN. ch. 119, § 23 (West Supp. 1993) (stating the standards used for administration of temporary shelter care); VT. STAT. ANN. tit. 33, § 5514 (1991) (stating the procedures for temporary shelter care for children pending a hearing); *In re Cullen*, No. 448, slip op. at 4 (Ohio App. 1981) (stating that it was not an abuse of discretion of the trial court to award and continue temporary shelter care to the subject children pending the final adjudicatory hearing). See generally *In re McCain*, 348 So. 2d 780, 782 (Ala. 1977) (stating that the court may grant the authority to order emergency medical care to any such person, agency, or department charged with the detention, temporary shelter or other care of a child within its jurisdiction); *In re X*, 714 P.2d 13, 16-17 (Idaho 1986) (noting that the rules of evidence are applicable in all Child Protective Act proceedings except for temporary shelter care proceedings which shall be conducted in an informal manner); *In re Maloney*, 492 N.E.2d 805, 808 (Ohio 1986) (holding that where an alleged neglected child is committed to temporary emergency custody of a children's board, pursuant to a shelter care hearing, the court is not forced to order a reunification plan).

dependent children, children placed by a regional center, or voluntary placements who are under six years of age.⁶

Under existing law, upon the initial hearing of a petition to make a minor a dependent of the court, a minor, who is not released from the custody of the court, must be placed in specified living arrangements⁷ for a period not to exceed fifteen judicial days.⁸ Existing law also mandates that upon the court's removal of a minor who has been adjudged a dependent, the court is required to order a probation officer, who has the discretion to put the minor in established placements, to supervise the minor.⁹

In addition to the aforementioned placements, Chapter 1088 allows a child under, the age of six years, to be placed in a community care facility licensed as a group home for children or in a temporary shelter care facility only when the court finds that the placement is necessary to secure a complete and adequate evaluation.¹⁰ Chapter 1088 stipulates that a child under the age of six years may be placed in a community care facility only when a case plan shows that the placement is for the purposes of providing specialized treatment to the child or when a case plan indicates that the placement is for the purposes of providing family reunification services.¹¹ Chapter 1088 additionally provides that for the purposes of family reunification services, one of the following circumstances must be applicable: (1) The child's parent is also a ward of the court; (2) the

6. CAL. HEALTH & SAFETY CODE § 1530.8(a) (enacted by Chapter 1088); *see* SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES, COMMITTEE ANALYSIS OF AB 1197, at 1 (Aug. 18, 1993) (stating that the intent of the bill is to improve the care of the very young who are most vulnerable and in need of legal protection).

7. *See* CAL. WELF. & INST. CODE § 319(d) (West Supp. 1993) (specifying that the minor shall be placed in the suitable home of a relative, in an emergency shelter or other suitable licensed place, a place exempt from licensure designated by the juvenile court, or in an appropriate certified family home of which a license is pending and all prelicense requirements for such a placement have been met).

8. *Id.*

9. *Id.* § 361.2 (amended by Chapter 1089).

10. *Id.* § 319.2 (enacted by Chapter 1088); *see id.* (limiting the placement period to 60 days unless a case plan has been developed, and the need for additional time has been documented and approved by the supervisor or of the caseworker's supervisor).

11. *Id.* § 361.2(b)(6) (amended by Chapter 1089); *see id.* § 361.2(b)(6)(A) (amended by Chapter 1089) (requiring that a case plan specify the need for the nature of as well as the anticipated duration of the treatment); *id.* (stating that the facility must meet the adopted standards and regulations of Health and Safety Code § 1530.8 and Welfare and Institutions Code § 11467.1); *id.* (limiting the specialized treatment period to 120 days, unless excess time is needed pursuant to the case plan and such an extension is approved by the caseworker's supervisor); *id.* § 361.2(b)(6)(B) (amended by Chapter 1089) (requiring the facility offer family reunification services that: (1) Meet the needs of the child and the child's family; (2) allows the parents to have 24 hour a day reasonable access to their child; (3) encourages parental involvement in meeting the daily needs of the child; and (4) employs a staff trained in providing family reunification services); *id.* (stating the additional conditions, one of which must be fulfilled, for a child under the age of six to be placed in a community care facility pursuant to a family reunification plan).

child's parent is in a treatment program affiliated with the facility and the child's placement facilitates the reunification services; or (3) placement in the facility is the only alternative permitting the parent to have 24 hour access to the child, to participate completely in meeting the daily needs of the child, and to have the access necessary for reunification services.¹² Chapter 1088 requires the Department to assess the needs of young children and to incorporate standards in consultation with specified interested parties.¹³

JVE

Health and Welfare; community care facilities—temporary license suspension

Health and Safety Code §§ 1550.5, 1596.803 (amended).
AB 960 (Bates); 1993 STAT. Ch. 475

Existing law requires community care facilities¹ to be licensed by the State Department of Social Services (Department).² Existing law further mandates that the Department may, for specified reasons while following

12. *Id.* 361.2(b)(6)(B) (amended by Chapter 1089).

13. CAL. WELF. & INST. CODE § 11467.1(b) (enacted by Chapter 1088); *see id.* § 11467.1(a) (enacted by Chapter 1088) (stating that the Legislature's intent is to develop standards addressing the specific need of very young children, from birth to six years of age, that are experiencing trauma due to their separation from their family who must be placed in out-of-home care); *see also* CAL. HEALTH & SAFETY CODE § 1530.8(a) (enacted by Chapter 1088) (requiring the Department to adopt regulations after assessing the needs of the population and developing standards in accordance with Welfare and Institutions Code § 11467.1).

1. *See* CAL. HEALTH & SAFETY CODE § 1502(a) (West Supp. 1993) (defining community care facility as any facility, place or building which is maintained and operated to provide non-medical residential care, day treatment, adult day care, or foster family agency services for children, adults, children and adults, including but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children); *see also* *Universal Life Church, Inc. v. State*, 158 Cal. App. 3d 533, 537, 205 Cal. Rptr. 11, 14 (1984) (using the definition in Health and Safety Code § 1502 to determine that a facility was required to be licensed pursuant to the Community Care Facilities Act); *cf.* HAW. REV. STAT. § 321-15.7 (Supp. 1992) (providing that an operator of an unlicensed adult residential care home is guilty of a misdemeanor); IDAHO CODE § 39-3352(1) (1993) (prohibiting the operation of unlicensed residential care facilities).

2. CAL. HEALTH & SAFETY CODE § 1508 (West 1990); *see id.* § 1503 (West 1990) (defining license as the permit necessary to operate a community care facility); *see id.* § 10550 (West 1991) (creating the State Department of Social Services within the Health and Welfare Agency).

specified procedures, suspend or revoke the license of a community care facility.³

Existing law allows the temporary suspension of a facility's license if it is necessary to protect residents from physical or mental abuse, abandonment, or other substantial threats to health or safety.⁴ Existing law additionally requires the Department to notify license holders of the temporary suspension and the right to a hearing concerning that suspension.⁵ Chapter 475 further requires the Department to notify licensees of the right to seek a review of the suspension before the superior court.⁶

Existing law mandates that a licensee, prior to suspension of licensure, may request an interim hearing by making a request to the Department within ten days of receiving the order of temporary suspension.⁷ Existing law additionally requires that upon request for an interim hearing, the Department must obtain a date and time for the hearing and notify the requesting licensee of that information within five working days.⁸ Chapter

3. CAL. HEALTH & SAFETY CODE § 1550 (West Supp. 1993); see *Woods v. Superior Court*, 102 Cal. App. 3d 608, 610, 162 Cal. Rptr. 577, 578 (1980) (stating that the superior court is vested with the discretion to review the director of Social Services' determination that a facility should be closed); see also *State Revokes Community Care License of Pomona Couple*, PR Newswire Ass'n, Inc., Aug. 19, 1993, available in LEXIS, Nexis Library, Current File (quoting Eloise Anderson, director of the California Department of Social Services, as saying "thousands of licensed community care facility operators in California do an excellent job providing nurturing, supportive environments for the children and adults in their care" and "unfortunately, we sometimes find that care providers instead are violating the terms of their licenses, and we must take appropriate legal steps to revoke the license and protect the vulnerable clients").

4. CAL. HEALTH & SAFETY CODE § 1550.5 (amended by Chapter 475); see *Habrun v. Department of Social Services*, 145 Cal. App. 3d 318, 322, 193 Cal. Rptr. 340, 343 (1983) (restricting the suspension of licenses, pursuant to California Health and Safety Code § 1550, to situations where the director of the Department reasonably believes that the continued operation of the facility would threaten its residents).

5. CAL. HEALTH & SAFETY CODE § 1550.5(a)(1) (amended by Chapter 475).

6. *Id.*; see SENATE RULES COMMITTEE, ANALYSIS OF AB 960, at 1 (August 19, 1993) (stating that Chapter 475 is intended to clarify the rights of a community care facility when appealing a temporary suspension order issued by the Department).

7. CAL. HEALTH & SAFETY CODE § 1550.5(a)(2)(A) (amended by Chapter 475).

8. *Id.*; see *id.* § 1550.5(a)(3)(B) (amended by Chapter 475) (stating that the interim hearing shall be limited to whether the Department abused its discretion in issuing the order); cf. *Barry v. Barchi*, 443 U.S. 55, 66 (1979) (finding that a New York statute, due to its provisions for summary interim suspensions of horse racing licenses and administrative stays pending a final hearing without sufficiently providing for a prompt post suspension hearing, violated the due process clause of the 14th Amendment); *Kurtzworth v. Illinois Racing Bd.*, 415 N.E.2d 1290, 1306 (Ill. App. 1991) (stating that the absence of any requirement for notice and hearing prior to interim suspension or revocation of licensure is seemingly a violation of procedural due process, because the end result is revocation or suspension with no opportunity to be heard); *Comm'n on Med. Discipline v. Stillman*, 435 A.2d 747, 758 (Md. App. 1981) (holding that a state statutory provision precluding a court from staying an order revoking or suspending a medical license does not constitute a violation of due process). See generally Russell G. Donaldson, Annotation, "Willfulness" and "Public Health, Interest, Or Safety" Exceptions to Notice and Opportunity For Compliance Provisions of Administrative Procedure Act (5 USCS § 558(c)) Dealing With Withdrawal, Suspension, Revocation, or Annulment of License, 46 A.L.R. Fed. 560, §§ 2, 10 (1980 & Supp.

475 provides that the licensee requesting a hearing may do so by mailing or delivering the request to the Officer of Administrative Hearings.⁹ Chapter 475 extends the time the Office of Administrative Hearings has to schedule a hearing to within ten working days after receiving the request.¹⁰ Chapter 475 additionally requires the Office of Administrative Hearings to promptly notify the licensee of such.¹¹

Prior law provided that evidence at a hearing must be submitted upon information and belief, and provided that the information submitted be by affidavit only.¹² Chapter 475 deletes this requirement and limits the evidence to the Department's accusation and order of temporary suspension of license.¹³

Chapter 475 provides that the Department shall have abused its discretion¹⁴ in issuing an order of temporary license suspension only when the accusation and order fail to allege facts and conditions showing that issuance of the order is necessary to protect residents or clients of the

1993) (analyzing federal court cases construing and applying the "willfulness" and "public health, interest or safety" exceptions to the notice and opportunity compliance provision regarding withdrawal, suspension, revocation, or annulment of a license); Michael A. Rosenhouse, Annotation, *Validity and Construction of State Statutory Provision Forbidding Court to Stay, Pending Review, Judgment or Order Revoking or Suspending Professional, Trade, or Occupational License*, 42 A.L.R.4th 516, §§ 3-4 (1985 & Supp. 1993) (discussing state and federal cases considering and discussing the validity, interpretation, or application of a state statutory provision purporting to prohibit a court from entering a stay or injunction pending appeal of revocation or suspension of a professional, trade, or occupational license).

9. CAL. HEALTH & SAFETY CODE § 1550.5(a)(2)(A) (amended by Chapter 475).

10. *Id.*; see SENATE RULES COMMITTEE, ANALYSIS OF AB 960, at 1 (August 19, 1993) (stating that Chapter 475 revises existing law in order to facilitate the ability of both the Department and the appellants to meet the time frames established for filing appeals and scheduling hearings).

11. *Id.*

12. 1992 Cal. Legis. Serv. ch. 1315, § 6.5, at 5481 (enacting CAL. HEALTH & SAFETY CODE § 1550.5(a)(3)(B)).

13. CAL. HEALTH & SAFETY CODE § 1550.5(a)(3)(B) (amended by Chapter 475).

14. See BLACK'S LAW DICTIONARY 10 (6th ed. 1990) (defining abuse of discretion as the failure to exercise a sound, reasonable, and legal discretion and indicates that the appellate court's opinion that the lower court, without intentional wrong or bad faith, committed an error of law); see also *Marriage of Connolly*, 23 Cal. 3d 590, 598, 591 P.2d 911, 915, 153 Cal. Rptr. 423, 427 (1979) (stating that the precise definition of abuse of discretion is difficult; however, it is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered); *Sierra Club v. California Coastal Comm'n*, 12 Cal. App. 4th 602, 609-10, 15 Cal. Rptr. 2d 779, 784 (1993) (applying the definition of abuse of discretion as being when an agency's decision is unsupported by its findings or if the findings are unsupported by the evidence); *Mallett v. Superior Court*, 6 Cal. App. 4th 1853, 1874, 8 Cal. Rptr. 2d 829, 842 (1992) (stating that abuse of discretion has been defined as "arbitrary determination, capriciousness or whimsical thinking"). See generally *People v. Jackson*, 10 Cal. App. 4th 13, 19, 12 Cal. Rptr. 2d 541, 543-44 (1992) (comparing and contrasting the abuse of discretion test with the substantial evidence test).

facility from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.¹⁵

JVE

Health and Welfare; day care facilities—smoking

Health and Safety Code § 1596.795 (amended).

AB 615 (Gotch); 1993 STAT. Ch. 335

Under existing law, child day care facilities¹ are regulated to ensure a quality day care environment.² Existing law generally recognizes that

15. CAL. HEALTH & SAFETY CODE § 1550.5(a)(7) (amended by Chapter 475).

1. See CAL. HEALTH & SAFETY CODE § 1596.750 (West 1990) (defining child day care facility to mean a facility that provides nonmedical care in the form of personal services, supervision, and other assistance to children under 18 years of age, to sustain and protect them, on less than a 24 hour basis); *id.* (providing that a child day care facility may be either a family day care home or a day care center); *id.* § 1596.76 (West 1990) (defining day care center to be any child day care facility other than a family day care home, including infant centers, preschools, and extended day care facilities); *id.* § 1596.78 (West 1990) (defining family day care home to be a provider's own home, in which care, protection, and supervision of 12 or fewer children is regularly provided, for periods of less than 24 hours per day while the children's parents are away); see also *Rush v. Obledo*, 756 F.2d 713, 716 (9th Cir. 1985) (noting that family day care homes are very different from institutional day care centers in that such homes are private residences, that generally the provider in a family day care home is a mother who is caring for her own children while also caring for others for pay, and that the Legislature has expressed its intent to preserve a traditional home environment in family day care homes); *North Valley Baptist Church v. McMahon*, 696 F. Supp. 518, 521 (E.D. Cal. 1988) (noting that day care centers run the gamut from those performing simple babysitting services to those providing intensive academic, recreational, social adjustment, or religious training), *aff'g* 893 F.2d 1139 (9th Cir. 1990), *cert. denied*, 496 U.S. 937 (1990).

2. CAL. HEALTH & SAFETY CODE § 1596.72(b),(e) (West 1990); see *id.* (declaring the Legislature's intent that the state ensure a quality day care environment, and finding that good quality day care is an essential service for working parents); *id.* § 1596.73(e) (West 1990) (recognizing that affordable, quality licensed child care is critical to the well-being of parents and children); see also *Rush*, 756 F.2d at 720 (noting that parents who use day care, especially low income parents who place their children in day care while they work, must be assured that the regulatory scheme will keep their children safe); *North Valley Baptist*, 696 F. Supp. at 526 (noting that the regulatory purpose of the state's child care licensing scheme is to protect the health and safety of children who receive care outside their home); *Adamson v. Department of Social Serv.*, 207 Cal. App. 3d 14, 22, 254 Cal. Rptr. 667, 672 (1988) (interpreting the statutory purpose of the state's child care regulatory scheme to be the protection of the health, morals, welfare, or safety of children receiving care); cf. *North Valley Baptist*, 696 F. Supp. at 527 (noting that a comprehensive day care regulatory scheme cannot guarantee the elimination of all health and safety hazards to children); *MacDonald v. State*, 230 Cal. App. 3d 319, 334, 281 Cal. Rptr. 317, 327 (1991) (observing that a comprehensive child care regulatory scheme does not transform the enforcing agency into an insurer of safety).

tobacco smoke is unhealthful,³ and regulates smoking in a variety of settings.⁴ Under prior law, a city or county could enforce its local ordinance prohibiting smoking of tobacco in a private residence licensed⁵

3. See CAL. HEALTH & SAFETY CODE § 24160(a) (West 1992) (declaring the Legislature's findings that smoking is the single most important source of preventable disease and premature death; that more than 30% of coronary heart disease cases, more than 30% of cancer deaths, and more than 80% of chronic obstructive lung diseases are attributable to smoking, and that the state spends \$5.6 billion annually on smoking related illnesses); *id.* § 25948(a)-(b) (West Supp. 1993) (taking legislative notice of the United States Surgeon General's report that finds environmental tobacco smoke is a cause of disease including lung cancer in healthy nonsmokers, and declaring the Legislature's findings that nonsmokers have no adequate means of protection from the damage inflicted when they involuntarily inhale tobacco smoke, and further declaring that regulation of smoking in public areas is necessary to protect nonsmokers); *American Tobacco Co. v. Superior Court*, 208 Cal. App. 3d 480, 486, 255 Cal. Rptr. 280, 283 (1989) (finding that tobacco is an "inherently unsafe" product under California Civil Code § 1714.45); see also ASSEMBLY COMMITTEE ON HUMAN SERVICES, COMMITTEE ANALYSIS OF AB 615, at 1 (Apr. 21, 1993) (reporting that research has linked health problems to secondhand smoke, that the federal Environmental Protection Agency has determined that in children, environmental tobacco smoke increases the risk of lower respiratory tract infections, increases the prevalence of fluid in the middle ear which is a sign of chronic middle ear disease, and increases the risk, frequency, and severity of asthma episodes, and that the EPA has also determined that environmental tobacco smoke should be classified as a Group A carcinogen); ENVIRONMENTAL PROTECTION AGENCY, RESPIRATORY HEALTH EFFECTS OF PASSIVE SMOKING: LUNG CANCER AND OTHER DISORDERS (1992) (asserting that environmental tobacco smoke is causally related to lung cancer, accounting for the deaths of approximately 3,000 nonsmokers annually). See generally Alan B. Horowitz, *Terminating the "Passive" Paradox: A Proposal for Federal Regulation of Environmental Tobacco Smoke*, 41 AM. U. L. REV. 183, 204 (1991) (asserting that the health risk of environmental tobacco smoke is beyond dispute, that it exceeds other environmental risks regulated by federal agencies, and that environmental tobacco smoke kills more people than all airborne pollutants regulated by EPA).

4. CAL. HEALTH & SAFETY CODE §§ 24167(q)(2), 25941, 25943, 25944, 25949, 25949.4, 25967(b), 27605 (West 1984, 1992 & Supp. 1993); CAL. PENAL CODE § 308(a)-(c) (West Supp. 1993); see CAL. HEALTH & SAFETY CODE § 24167(q)(2) (West 1992) (prohibiting all tobacco use on school grounds by July 1, 1996); *id.* § 25941 (West 1984) (limiting smoking at indoor public meeting places); *id.* § 25943 (West 1984) (limiting smoking in exhibition halls); *id.* § 25944 (West 1984) (limiting smoking in restaurants); *id.* § 25949 (West Supp. 1993) (prohibiting smoking on public transportation vehicles); *id.* § 25949.4 (West Supp. 1993) (limiting smoking in public transportation passenger waiting and service areas); *id.* § 25967(b) (West Supp. 1993) (prohibiting nonsale distribution of cigarettes and smokeless tobacco); *id.* § 27605 (West Supp. 1993) (prohibiting smoking in retail food preparation and storage areas); CAL. PENAL CODE § 308(a)-(c) (West Supp. 1993) (prohibiting sale or furnishing of tobacco to minors); see also *Helling v. McKinney*, 113 S. Ct. 2475, 2481 (1993) (holding that prisoners have a right to sue prison officials for exposure to environmental tobacco smoke at levels which pose an unreasonable risk to future health); *Grusendorf v. Oklahoma City*, 816 F.2d 539, 543 (10th Cir. 1987) (holding that a regulation prohibiting smoking by firefighter trainees, on the job or off, was valid and enforceable); *Fagan v. Axelrod*, 550 N.Y.S.2d 552, 561 (1990) (holding that regulation of indoor smoking in public areas and workplaces by the State of New York, in order to reduce health risks of environmental tobacco smoke, is constitutional).

5. See CAL. HEALTH & SAFETY CODE § 1596.80 (West 1990) (providing that no person, firm, partnership, association, or corporation shall operate, establish, manage, conduct, or maintain a child day care facility without a current valid license); *North Valley Baptist Church*, 696 F. Supp. at 527 (noting that the state's interest in protecting its very young while in a preschool setting is most compelling, that a comprehensive licensing scheme is an effective method to advance this interest, that use of a licensing scheme, as opposed to other forms of government regulation, has a number of distinct advantages, and that the most important advantage is the breadth of power given to the implementing agency in the areas of prevention, monitoring, and enforcement), *aff'd* 893 F.2d 1139 (9th Cir. 1990), *cert. denied*, 496 U.S. 937 (1990).

as a child day care facility only during the hours of operation⁶ and in those areas⁷ where children were present.⁸

Under Chapter 335, the smoking of tobacco in a private residence licensed as a family day care home⁹ is prohibited during hours of operation in those areas where children are present.¹⁰ Smoking on the premises of a licensed child day care center is prohibited totally.¹¹ Chapter 335 does not prohibit a city or county from enacting more

6. See *Rush v. Obledo*, 756 F.2d 713, 721 (9th Cir. 1985) (noting that a family day care home is a business only when children cared for from other families for compensation are present, and at all other times is a private residence); *id.* (noting that day care activities take place only when the home is being operated as a family day care business).

7. See *Solander v. Municipal Court*, 45 Cal. App. 3d 664, 668, 119 Cal. Rptr. 609, 612 (1975) (noting that "area," at least within the context of a municipal code requiring that hot water be provided in all food preparation "areas," means a specialized space within a room or building, and quoting Webster's definition of "area" as a definitely bounded part or section of a building set aside for a specific use or purpose); *Rush*, 756 F.2d at 721 (noting that, even when children are present, their caregiver retains expectations of privacy in those areas to which the day care children are denied access).

8. 1986 Cal. Stat. ch. 407, sec. 1, at 1632 (enacting CAL. HEALTH & SAFETY CODE § 1596.795); *see, e.g., City Of Sacramento's Smoking Law*, SACRAMENTO BEE, Dec. 15, 1990, at A25 (reporting a City of Sacramento ordinance, effective immediately, which bans smoking in various settings including licensed day care facilities); *Mayor Signs Smoking Ordinance*, L.A. TIMES, Dec. 4, 1987, at 1 (reporting a City of Los Angeles ordinance, effective January 1988, which limits smoking in various settings including most areas of private schools and day care centers); Don Sweeney, *Restaurant Poll Heats Up Smoking Ban Talk*, SACRAMENTO BEE, July 23, 1992, at N1 (reporting a City of West Sacramento ordinance, effective September 1992, which bans smoking in various settings including child care centers); Joe Thome, *County OKs Smoking Ban*, FRESNO BEE, Feb. 24, 1993, at B3 (reporting a Madera County ordinance, effective May 24, 1993, which bans smoking in various settings including day care and group home facilities).

9. See *supra* note 1 (defining family day care home).

10. CAL. HEALTH & SAFETY CODE § 1596.795 (amended by Chapter 335); *see Rush*, 756 F.2d at 722 (noting that family day care homes are subject to pervasive regulations expressly applying only to them, and that the regulations are necessary to protect the health and safety of children); *id.* at 720 (recognizing the state's vital interest in protecting children in family day care homes, and on that basis upholding a regulation which allows unannounced, warrantless searches of such homes); *cf. ALASKA STAT. § 18.35.305* (1991) (prohibiting smoking in a private residence used for day care only during hours of operation and in areas used by children). See generally Victoria L. Wendling, Note, *Smoking and Parenting: Can They Be Adjudged Mutually Exclusive Activities?*, 42 CASE W. RES. L. REV. 1025 (1992) (reporting a California superior court case wherein a mother was issued a custody modification order which prohibited her from smoking in her child's presence).

11. CAL. HEALTH & SAFETY CODE § 1596.795 (amended by Chapter 335); *North Valley Baptist Church v. McMahon*, 696 F. Supp. 518, 537 (E.D. Cal. 1988) (holding that the state's paramount concern for the health and safety of young children at day care centers justifies strict and even burdensome regulation), *aff'g* 893 F.2d 1139 (9th Cir. 1990), *cert. denied*, 496 U.S. 937 (1990); *Lopez v. McMahon*, 205 Cal. App. 3d 1510, 1516, 253 Cal. Rptr. 321, 324 (1989) (holding that the business of operating day care facilities for children is intimately related to the public interest and well within the Legislature's province to regulate); *see also H.R. 710*, 103rd Cong., 1st Sess. (1993) (requiring that any entity using federal funds to provide services to children under age 18 must establish and make a good faith effort to enforce a nonsmoking policy in child service areas); S. 261, 103rd Cong., 1st Sess. (1993) (requiring that smoking in facilities used for federally funded children's programs be limited to areas where children are not normally present and which are separately ventilated); *cf. FLA. STAT. ch. 386.203(1)(u)*, 386.204 (1993) (prohibiting smoking in day care centers); *MICH. COMP. LAWS ANN. § 333.12604(1)-(2)* (West 1992) (prohibiting smoking in, or on the premises of, child caring institutions or child care centers, except in designated smoking areas that are both physically and visually separate from common areas and general child care areas).

stringent controls over smoking in private residence family day care homes.¹²

MKF

Health and Welfare; health facility deficiencies

Health and Safety Code §§ 1280.1, 1280.2, 1288.4 (new); § 1280 (amended).

AB 1621 (Burton); 1993 STAT Ch. 1152

Under existing law, the State Department of Health Services (DHS)¹ is required to notify a health facility² of all deficiencies³ in the facility's compliance with existing regulations.⁴ Existing law further requires the DHS and the health facility to agree upon a plan that gives the facility a reasonable time to cure the deficiencies.⁵

12. CAL. HEALTH & SAFETY CODE § 1596.795 (amended by Chapter 335); *see id.* § 25946 (West 1984) (declaring a legislative intent not to preempt local regulation of tobacco smoking).

1. *See* CAL. HEALTH & SAFETY CODE § 100 (West 1990) (designating the State Department of Health Services under the Health and Welfare Agency).

2. *See id.* § 1250 (West Supp. 1993) (defining health facility as any facility that is organized, maintained, and operated for the treatment of human illness and listing different kinds of health facilities).

3. *See* *Baber v. Napa State Hosp.*, 209 Cal. App. 3d 213, 216, 257 Cal. Rptr. 55, 56-57 (1989) (providing that inadequate staffing and inadequate facilities were examples of deficiencies).

4. CAL. HEALTH & SAFETY CODE § 1280(b) (amended by Chapter 1152) (requiring that the state department must notify the health facility of all deficiencies in its compliance with licensing regulations); *cf.* IOWA CODE ANN. § 135C.40(1) (West 1992) (providing for a written citation to be issued and sent to a health facility in order to give notice of its deficiency); MICH. COMP. LAWS ANN. § 333.20165(1) (West 1992) (allowing the suspension or revocation of a health facility license or certification after issuing notice of intent to revoke or suspend a license for enumerated violations); TENN. CODE ANN. § 68-11-703 (Michie 1992) (providing for notification of a violation); UTAH CODE ANN. § 26-21-11(1) (Michie Supp. 1993) (authorizing service of a written statement of violation).

5. CAL. HEALTH & SAFETY CODE § 1280 (amended by Chapter 1152) (allowing for a corrective plan to cure deficiencies within a reasonable time); *see Baber*, 209 Cal. App. 3d at 215-16, 257 Cal. Rptr. at 56 (discussing deficiencies and requiring a plan of correction to cure the deficiencies); *cf.* IOWA CODE § 135C.40(1) (West 1992) (requiring that in certain circumstances a citation must state a period of time allowed for the correction of a violation); TENN. CODE ANN. § 68-11-703 (Michie 1992) (stating that the licensing board shall provide the hospital a reasonable opportunity to correct a violation); UTAH CODE ANN. § 26-21-11(1) (Michie Supp. 1993) (providing that a written statement of violation must include time frames for the correction of all violations); *Evelyn V. v. Kings County Hosp.*, 819 F. Supp. 183, 188 (E.D.N.Y. 1993) (discussing a plan of correction to remedy deficiencies).

Under Chapter 1152, if a facility licensed as a general acute care hospital,⁶ acute psychiatric hospital,⁷ or special hospital⁸ (Special Facility) fails to implement the plan within a reasonable time, the DHS may order the plan's implementation.⁹ Chapter 1152 further permits the DHS to order the implementation of a corrective plan devised by the DHS if a Special Facility fails to agree with the DHS on a plan within a reasonable time and if the deficiency poses an immediate and substantial hazard.¹⁰ Chapter 1152 authorizes the DHS to impose civil penalties on Special Facilities that fail to correct deficiencies.¹¹ Chapter 1152 additionally requires that Special Facilities post a conspicuous notice which provides the telephone number of the DHS's regional licensing office where complaints may be reported.¹²

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6. See CAL. HEALTH & SAFETY CODE § 1250(a) (West Supp. 1993) (defining "general acute care hospital" as a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, and basic services).

7. See *id.* § 1250(b) (West Supp. 1993) (defining "acute psychiatric hospital" as a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care for mentally disordered or incompetent patients).

8. See *id.* § 1250(f) (West Supp. 1993) (defining "special hospital" as a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient care in dentistry or maternity).

9. *Id.* § 1280(c)(1) (amended by Chapter 1152).

10. *Id.*; see *id.* § 1280(c)(1)-(2)(B) (amended by Chapter 1152) (providing that the director of the DHS may either order the implementation of a plan devised by the DHS or may order one of the following measures: (1) A reduction in the number of patients; or (2) closure of the unit or units within the facility that pose the risk); cf. N.M. STAT. ANN. § 24-1-5.2(A)(1)(a) (Michie 1991) (providing that a directed plan of correction may be imposed on a facility which violates any licensing requirement).

11. CAL. HEALTH & SAFETY CODE § 1280.1(a) (enacted by Chapter 1152); see *id.* (authorizing the DHS to assess a civil penalty in an amount not to exceed \$50 per patient affected by the deficiency for each day that the deficiency is not corrected); *Lackner v. St. Joseph Convalescent Hosp.*, 106 Cal. App. 3d 542, 547-49, 165 Cal. Rptr. 198, 200-01, (1980) (discussing civil penalties for violations of regulations governing long-term health care facilities) cf. IOWA CODE § 135C.40(1) (West 1992) (imposing a civil penalty of \$50 for each day a violation continues after the time specified for correction); IND. CODE ANN. § 16-41-11-7(b) (West Supp. 1993) (providing for a civil penalty not to exceed \$1,000 per violation, per day for failure to correct the violation or interference with the inspection of violations); MONT. CODE ANN. § 50-5-307(1) (1993) (providing for a civil penalty in an amount between \$1000 and \$10,000 for a violation).

12. CAL. HEALTH & SAFETY CODE § 1288.4 (enacted by Chapter 1152); cf. MINN. STAT. § 144.652(1) (West Supp. 1993) (providing that a policy statement must be posted conspicuously in a public place in health facilities and the statement must include an address for filing complaints).

Health and Welfare; housing discrimination

Civil Code §§ 798.76, 799.5 (amended); Government Code §§ 12955.7, 12955.8, 12955.9, 12981.1, 12987.1 (new); §§ 12927, 12955, 12955.1, 12955.6, 12980, 12981, 12989, 12989.2, 12993, 12995 (amended).
AB 2244 (Polanco); 1993 STAT. Ch. 1277

Under existing law, the California Fair Employment and Housing Act (FEHA)¹ prohibits discrimination² in housing on the basis of race, color, religion,³ sex,⁴ marital status, national origin, ancestry, familial status,⁵ or disability.⁶ Chapter 1277 further disallows discrimination through public or private land use regulations, such as restrictive covenants⁷ or zoning laws, that deny housing opportunities to persons because of their race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.⁸ Additionally, Chapter 1277 forbids coercing,

1. See CAL. GOV'T CODE §§ 12900-12996 (West 1992 & Supp. 1993) (setting forth the provisions of FEHA); cf. FLA. STAT. ANN. §§ 760.20-760.60 (West 1986 & Supp. 1993); TEX. REV. CODE STAT. ANN. art. 1f (West Supp. 1993) (setting forth provisions of fair housing acts).

2. See CAL. GOV'T CODE § 12927(c) (amended by Chapter 1277) (defining discrimination as the refusal to sell, rent, or lease housing accommodations); cf. 42 U.S.C. § 3604(f)(3) (1988) (listing discriminatory actions and types of behavior).

3. See CAL. GOV'T CODE § 12926(n) (West Supp. 1993) (defining religion to include all aspects of religious belief, observance, and practice).

4. See *id.* § 12926(o) (West Supp. 1993) (defining sex to include pregnancy, childbirth, or related medical conditions).

5. See *id.* § 12955.2 (West Supp. 1993) (defining familial status as the situation of any individual under 18 who resides with a parent or with a legal custodian); see also *Gorski v. Troy*, 929 F.2d 1183, 1187 (7th Cir. 1991) (holding that foster parents qualify for protection from discrimination based on familial status); cf. 42 U.S.C. § 3602(k) (1988) (defining familial status). See generally Michael A. Wolff, Comment, *The Fair Housing Amendments Act of 1988: A Critical Analysis of "Familial Status,"* 54 MISS. L. REV. 393, 393 (1989) (suggesting that the California Fair Employment and Housing Act (FHAA) harshly curbs the freedom of those it regulates, without aiding those it intends to protect to a comparable or superior degree).

6. CAL. GOV'T CODE § 12955 (amended by Chapter 1277); see *id.* § 12955.3 (West Supp. 1993) (defining disability as a physical or mental impairment that substantially limits a person's major life activities); cf. 42 U.S.C. § 3604(a)-(f) (1988); FLA. STAT. ANN. § 760.23 (West Supp. 1993); N.Y. EXEC. LAW § 296(5) (McKinney 1993); TEX. REV. CIV. STAT. ANN. art. 1f § 3.01(a),(b) (West Supp. 1993); 24 C.F.R. § 100.50(b) (1992) (prohibiting discrimination in the sale or rental of housing). See generally James A. Kushner, *The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049, 1068-1120 (1989) (surveying the past, present, and future of fair housing laws, with the FHAA as its point of focus); Keith Aoki, Comment, *Fair Housing Amendments Act of 1988*, 24 HARV. C.R.-C.L. L. REV. 249, 249-63 (1989) (examining the provisions of the FHAA).

7. See 7 HARRY D. MILLER & MARVIN B. STARR, *CURRENT LAW OF CALIFORNIA REAL ESTATE* § 20:15 (2d ed. 1990) (discussing declarations of covenants, conditions, and restrictions).

8. CAL. GOV'T CODE § 12955(1) (amended by Chapter 1277); see ASSEMBLY COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF AB 2244, at 6 (Aug. 24, 1993) (describing Chapter 1277 as a measure to render California fair housing law substantially equivalent to federal standards, thereby granting it eligibility

intimidating, threatening, or interfering with persons who are exercising their rights against unlawful housing practices, or who are making efforts to aid or encourage others to do the same.⁹ Chapter 1277 specifies the means by which proof of FEHA violations may be established, and states that a showing of discriminatory effect suffices to formulate a *prima facie* case.¹⁰ Chapter 1277 clarifies that provisions relating to discrimination based on familial status do not encompass older persons.¹¹

Existing law categorizes as discriminatory any failure to design and construct a covered multi-family dwelling¹² according to specifications that meet the needs of persons with disabilities.¹³ Under existing law, the Office of the State Architect¹⁴ is responsible for developing building standard regulations for public housing, while the Department of Housing and Community Development¹⁵ is delegated the task with respect to all other types of residential occupancies.¹⁶ Chapter 1277 maintains that

to achieve certification from the Department of Housing & Urban Development and to attain federal enforcement funds); *see also* *Easter Seal Society of New Jersey, Inc. v. Township of North Bergen*, 798 F. Supp. 228, 238 (D.N.J. 1992) (granting injunctive relief to unrelated mentally ill persons wishing to relocate into a family residential zone); *Baxter v. City of Belleville*, 720 F. Supp. 720, 735 (S.D. Ill. 1989) (enjoining defendant city from refusing a special use permit for an AIDS hospice after classifying patients stricken with the disease as handicapped); *cf.* ILL. ANN. STAT. ch. 775, para. 5/3-105 (Smith-Hurd 1993) (prohibiting any restriction or limitation on the conveyance, encumbrance, occupancy, or use of property formulated upon the basis of race, color, religion, or national origin). *See generally* Jane McGrew et al., *Fair Housing: An Agenda for the Washington Lawyers' Committee for Civil Rights*, 27 *How. L.J.* 1291, 1292 (1984) (recognizing that zoning and land use restrictions may be manipulated by local governments to establish racial patterns in housing).

9. CAL. GOV'T CODE § 12955.7 (enacted by Chapter 1277); *cf.* 42 U.S.C. § 3617 (1988); FLA. STAT. ANN. § 760.37 (West Supp. 1993); 24 C.F.R. § 100.400 (1992) (making unlawful any act of coercion, intimidation, threat, or interference with regard to a person's enjoyment of fair housing rights, or assistance to another in the exercise of those same rights).

10. CAL. GOV'T CODE § 12955.8(a)-(b) (enacted by Chapter 1277); *see* *United States v. City of Black Jack*, 508 F.2d 1179, 1184 (8th Cir. 1974) (holding that in order to establish a *prima facie* case of racial discrimination, a plaintiff need prove no more than discriminatory effect); *see also* Aoki, *supra* note 6, at 259 (differentiating between disparate impact analysis, which looks at discriminatory effect, and disparate treatment analysis, which concerns itself with discriminatory motive or intent).

11. CAL. GOV'T CODE § 12955.9(a) (enacted by Chapter 1277); *see id.* § 12955.9(b) (defining housing for older persons); *see also id.* § 12955.2 (West Supp. 1993) (defining familial status).

12. *See id.* § 12955.1(c) (amended by Chapter 1277) (defining covered multi-family dwelling).

13. *Id.* § 12955.1 (amended by Chapter 1277); *see* 1989 Cal. Att'y Gen. Comm'n on Disability Final Report, at 39-55 (describing the need for, and means of, removing architectural barriers to access).

14. *See* CAL. GOV'T CODE § 14950 (West Supp. 1993) (establishing the State Architect's position as an appointive post).

15. *See* HEALTH & SAFETY CODE § 50400 (West 1986) (affirming the continued existence of the Department of Housing and Community Development).

16. CAL. GOV'T CODE § 12955.1(d) (amended by Chapter 1277); *see* 1989 Cal. Att'y Gen. Comm'n on Disability Final Report, at 50 (advocating the creation of an Architectural Enforcement Unit within the Office of the State Architect to monitor the performance of local building departments).

federal standards shall replace state regulations, if the federal standards offer greater protection to disabled persons.¹⁷

Existing law asserts that FEHA does not limit the reach of other state anti-discrimination laws.¹⁸ Chapter 1277 qualifies this rule by indicating that FEHA overrides these other provisions if they do not secure equal or greater rights than FEHA for enumerated protected classes.¹⁹ The extent of Chapter 1277, however, does not affect state and local public nuisance²⁰ laws.²¹

Under existing law, whenever the Department of Fair Employment and Housing (DFEH)²² receives a complaint, it is required to serve notice upon the complainant of the time limits, rights of the parties, and choice of forum under the law.²³ Chapter 1277 further orders the DFEH to furnish a written explanation to the complainant, clarifying that if an accusation is issued, the complainant may only be able to obtain recovery for emotional distress²⁴ and other intangible injuries by way of a civil

17. CAL. GOV'T CODE § 12955.1(d) (amended by Chapter 1277); *see* DOROTHY L. GRANT ET AL., ADA COMPLIANCE GUIDELINES, CALIFORNIA ACCESS CODE 81-227 (1993) (setting forth the accessibility design standards of the Americans with Disabilities Act); *id.* at 231-351 (setting forth the provisions of the California Building Code, pertaining to accessibility of housing and other structures); *see also* Roger W. Andersen, *Architectural Barriers Legislation and the Range of Human Ability: Of Civil Rights, Missed Opportunities, and Building Codes*, 28 WILLAMETTE L. REV. 525 (1992) (offering an overview of federal legislation on architectural designs to meet the needs of the physically challenged, criticizing its flaws, and proposing a framework for the development of appropriate state laws). *See generally* AMERICANS WITH DISABILITIES ACT MANUAL 84-89 (John Parry ed., 1992) (outlining a methodology for complying with ADA standards in building).

18. CAL. GOV'T CODE § 12993(a) (amended by Chapter 1277); *see, e.g.*, CAL. CIV. CODE § 51(a) (West Supp. 1993) (prohibiting discrimination in business establishments).

19. CAL. GOV'T CODE § 12993(a) (amended by Chapter 1277); *see id.* (extending protection from discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age).

20. *See* CAL. CIV. CODE § 3480 (West 1970), CAL. PENAL CODE § 370 (West 1988) (defining public nuisance).

21. CAL. GOV'T CODE § 12955(b) (amended by Chapter 1277); *see* *People v. Projection Room Theater*, 17 Cal. 3d 42, 53, 550 P.2d 600, 606, 130 Cal. Rptr. 328, 332 (1976) (holding that public nuisance laws may be used to regulate exhibition of obscene materials to "consenting adults"); *see also* *Wolford v. Thomas*, 190 Cal. App. 3d, 347, 356, 235 Cal. Rptr. 422, 427 (1987) (refusing to classify a building or structure as a public nuisance simply because it obstructs passage of light and air to a neighboring property); *Vedder v. County of Imperial*, 36 Cal. App. 3d 654, 661, 111 Cal. Rptr. 728, 732 (1974) (categorizing a fire hazard as a public nuisance). *See generally* Pamela Chappelle, Comment, *Can an Adult Theater or Bookstore Be Abated as a Public Nuisance in California?*, 10 U.S.F. L. REV. 115, 132 (1975) (concluding that a public hearing should be held to determine the obscenity of the materials in question before a public nuisance action can be brought).

22. *See* CAL. GOV'T CODE § 12901 (West 1992) (establishing the DFEH); *id.* § 12930 (West Supp. 1993) (enumerating the Department's functions, powers, and duties).

23. *Id.* § 12980(d) (amended by Chapter 1277); *cf.* 42 U.S.C. § 3610(a)(1)(B)(i) (1988) (requiring the Secretary of the Department of Housing and Urban Development to inform an aggrieved person about time limits and choice of forum).

24. *See* RESTATEMENT (SECOND) OF TORTS §§ 46-47 (1965) (discussing the interest in freedom from emotional distress, and the elements of that cause of action); 5 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts*, §§ 402-417 (9th ed. 1988 & Supp. 1993) (discussing intentional infliction of emotional distress).

action.²⁵ Chapter 1277 classifies all agreements of settlement concerning discrimination complaints filed pursuant to this section as agreements between the complainant and the respondent, and subjects them to DFEH approval.²⁶ Under prior law, the director of the DFEH was obligated to attend to the issuance of a written accusation on behalf of the department within 100 days after a complaint had been filed, if possible.²⁷ Chapter 1277 requires the DFEH director to have the accusation issued within the 100-day term, except when it is impracticable to do so.²⁸ It also allows an aggrieved person,²⁹ as a matter of right, to intervene³⁰ in any subsequent proceeding and to appeal any resulting decision.³¹ Chapter 1277 also forbids the DFEH from dismissing an accusation, unless the complainant withdraws it or the Department concludes, after thorough investigation, that no reasonable cause exists to believe that an unlawful housing practice has or will occur.³²

Existing law requires the Fair Employment and Housing Commission (FEHC)³³ to hold a hearing concerning accusations of housing discrimination in much the same manner that hearings are conducted for employment discrimination complaints.³⁴ Chapter 1277 clarifies this

25. CAL. GOV'T CODE § 12980(d) (amended by Chapter 1277).

26. *Id.* § 12980(j) (amended by Chapter 1277).

27. 1992 Cal. Stat. ch. 182, sec. 15, at 751 (amending CAL. GOV'T CODE § 12981(a)).

28. CAL. GOV'T CODE § 12981(a) (amended by Chapter 1277); *cf.* 42 U.S.C. § 3610(a)(1)(B)(iv) (1988) (imposing a duty on the Secretary of HUD to complete an investigation within 100 days of the filing of a complaint, unless it is impracticable to do so).

29. *See* CAL. GOV'T CODE § 12927(f) (amended by Chapter 1277) (defining aggrieved person).

30. *See* CAL. CIV. PROC. CODE § 387 (West Supp. 1993) (defining intervention); *see also* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA CIVIL PRACTICE GUIDE, CIVIL PROCEDURE BEFORE TRIAL §§ 2:400-2:476 (1993) (discussing intervention); *cf.* FED. R. CIV. P. 24(a) (describing intervention of right).

31. CAL. GOV'T CODE § 12981(a) (amended by Chapter 1277); *see* Weil & Brown, *supra* note 32, at § 2:401 (discussing intervention of right in California); *see also* Thomas A. Coyne, FEDERAL RULES OF CIVIL PROCEDURE 328-331 (1993) (discussing intervention of right within the context of FRCP 24).

32. CAL. GOV'T CODE § 12981.1 (enacted by Chapter 1277).

33. *See id.* § 12903 (West Supp. 1993) (establishing the FEHC); *id.* § 12935 (West Supp. 1993) (enumerating the Commission's functions, powers, and duties).

34. *Id.* § 12981(c) (amended by Chapter 1277); *see id.* §§ 12967-12972 (West 1992 & Supp. 1993) (delineating the hearing procedure for employment discrimination accusations); *see also* Marjorie Gelb & JoAnne Frankfurt, *California's Fair Employment and Housing Act: A Viable State Remedy for Employment Discrimination*, 34 HASTINGS L.J. 1055, 1060-67 (1983) (outlining administrative procedure under FEHA). *See generally* International Union of Operating Engineers, Local No. 12 v. Fair Employment Practices Comm'n, 276 Cal. App. 2d 504, 515, 81 Cal. Rptr. 47, 54 (1969) (finding no due process violation when a Fair Employment Practices Commission (FEPC) member participates in a decision after reading and considering the evidence or a transcript without personally being present at the hearing); Michael C. Tobriner, *The Fair Employment Practices Commission: The Frustration of Potential*, 10 U.S.F. L. REV. 37, 37 (1975) (describing the condition of the FEPC as "disastrous" and its performance as "abysmal"); *id.* at 56-66 (proposing reforms). Michael C. Tobriner, *California FEPC*, 16 HASTINGS L.J. 333, 337-42 (1965) (offering a historical view and a statistical summary of disposition of complaints by the FEPC).

overlap by noting that where the law offers greater rights and remedies to an aggrieved party in housing discrimination cases than it does in employment discrimination cases, the provisions governing housing discrimination prevail.³⁵ Chapter 1277 also authorizes any party aggrieved by the FEHC's final order for relief to seek review of that decision.³⁶ Chapter 1277 specifies the types of relief that may be granted by the superior court.³⁷

Under existing law, the management of a mobilehome³⁸ park³⁹ may require that prospective purchasers adhere to regulations that limit residency to adults.⁴⁰ Existing law also authorizes management to demand that purchasers, who will maintain their mobilehome in a subdivision, cooperative, or condominium⁴¹ for mobilehomes, comply with regulations

35. CAL. GOV'T CODE § 12981(c) (amended by Chapter 1277); *see, e.g., id.* § 12989.2 (amended by Chapter 1277) (allowing a court to grant actual and punitive damages, or injunctive relief upon a finding of discriminatory housing practices in private civil actions); *cf.* 42 U.S.C. § 3613(c) (1988) (authorizing a court to allocate damages or issue injunctions in response to a discriminatory housing practice). *See generally* Robert G. Schwemm, *Compensatory Damages in Federal Fair Housing Cases*, 16 HARV. C.R.-C.L. L. REV. 83, 93-94 (1981) (addressing the problem of valuating intangible injuries and contemplating a systematic basis of determining amounts for damages).

36. CAL. GOV'T CODE § 12987.1(a) (enacted by Chapter 1277); *cf.* 42 U.S.C. § 3612(i)(1) (1988) (allowing an aggrieved party to seek judicial review of a relief order).

37. CAL. GOV'T CODE § 12987.1(b) (enacted by Chapter 1277); *see id.* (authorizing the superior court to grant temporary relief by way of restraining order or other means, and empowering it to affirm, modify, set aside, or remand an order); *cf.* 42 U.S.C. § 3612(k)(1) (1988) (listing options that a court has in granting relief).

38. *See* CAL. CIV. CODE § 798.3(a),(b) (West Supp. 1993) (defining mobilehomes); *cf.* CAL. HEALTH & SAFETY CODE § 18008 (West Supp. 1993); CAL. VEH. CODE § 396 (West 1987) (defining mobilehome).

39. *See* CAL. CIV. CODE § 798.4 (West 1982) (defining mobilehome park).

40. *Id.* § 798.76 (amended by Chapter 1277); *see* James F. Vernon, *Mobilehomes: Present Regulation and Needed Reforms*, 27 STAN. L. REV. 159, 159-75 (1974) (examining shortcomings in mobilehome law and proposing new approaches that treat mobilehomes as single-family dwellings rather than vehicles). *See generally* 44 CAL. JUR. 3d MOBILEHOMES §§ 13-14 (1978 & Supp. 1993) (discussing statutes regulating utilization of and tenancy in mobilehome parks); 4 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property*, §§ 527-542 (9th ed. 1987 & Supp. 1993) (offering an overview of mobilehome residency law).

41. *See* CAL. CIV. CODE § 783 (West Supp. 1993) (defining condominium); *see also* Miller & Starr, *supra* note 7, at § 20:13 (defining and describing condominiums).

limiting residency to adults.⁴² Chapter 1277 replaces the term "adults" with "older persons."⁴³

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Health and Welfare; Licensed Midwifery Practice Act of 1993

Business and Professions Code §§ 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515 (repealed); §§ 2505, 2506, 2507, 2511, 2512, 2512.5, 2514, 2514.5, 2515, 2515.5, 2517, 2518, 2519, 2520, 2521 (new); Insurance Code § 10354 (new); § 11512.07 (amended); Welfare and Institutions Code § 14132.39 (new).

SB 350 (Killea, Watson); 1993 STAT. Ch. 1280

Existing law regulates the certification of nurse midwives.¹ Prior law authorized the certification of non-nurse midwives.² Chapter 1280 repeals the sections providing for certification of non-nurse midwives and creates the Licensed Midwifery Practice Act of 1993.³

42. CAL. CIV. CODE § 799.5 (amended by Chapter 1277); *see id.* (requiring that the regulations be in line with the FHAA); Letter from Mr. & Mrs. Bob Ford Snyder to Senator William A. Craven, Chairman, Senate Select Committee on Mobilehomes (Feb. 10, 1989), *reprinted in CALIFORNIA SENATE SELECT COMMITTEE ON MOBILEHOMES, EFFECT OF 1988 FEDERAL FAIR HOUSING AMENDMENTS ACT ON MOBILEHOME PARKS* (1989) (expressing a couple's disappointment at being unable to sell a mobilehome, due to the age requirement for buyers).

43. CAL. CIV. CODE §§ 798.76, 799.5 (amended by Chapter 1277); *cf.* 42 U.S.C. § 3607(b)(2) (1988) (defining housing for older persons as accommodations intended for persons 62 years of age or older, with exceptions); ILL. ANN. STAT. ch. 775, para. 5/3-106(1) (Smith-Hurd 1993); TEX. REV. CIV. STAT. ANN. art. 1f, § 1.07(b) (West Supp. 1993) (defining housing for older persons). *See generally* Kim Savage & Stephanie Edelstein, *Housing Rights of Older Persons*, 25 CLEARINGHOUSE REV. 648, 648-52 (1991) (discussing developments in the area of housing rights for older persons, with particular focus on the rights of the frail elderly); *id.* at 652 (concluding that older persons frequently suffer discrimination because they are unaware of their rights and unable to protect themselves because of a disabling condition or fear of reprisal).

1. CAL. BUS. & PROF. CODE §§ 2746-2746.8 (West 1990 & Supp. 1993).

2. 1980 Cal. Stat. ch. 1313, sec. 2, at 4510 (enacting CAL. BUS. & PROF. CODE §§ 2505-15).

3. CAL. BUS. & PROF. CODE §§ 2505, 2506, 2507, 2511, 2512, 2512.5, 2514, 2514.5, 2515, 2515.5, 2518, 2519, 2520, 2521 (enacted by Chapter 1280); *see* Licensed Midwifery Practice Act, 1993 Cal. Leg. Serv. ch. 1280, sec. 1 (a)-(k), at ____ (stating the findings and declarations of the Legislature regarding infant mortality rate, perinatal care and midwifery); SENATE BUSINESS & PROFESSIONS, COMMITTEE ANALYSIS OF SB 350, at 4 (June 14, 1993) (discussing the purpose behind the legislation, which is to create regulatory standards for training and practice for non-nurse midwives, in order to provide a cost-effective system for perinatal services); *id.* (finding that there is a high infant mortality rate in the U.S., as well as a decrease in available health care for low-income women); DIVISION OF CONSUMER SERVICES, CALIFORNIA STATE DEPARTMENT OF CONSUMER

Chapter 1280 authorizes a licensed midwife⁴ to attend cases of normal child birth, in addition to providing other perinatal⁵ services, all under the supervision of a licensed physician.⁶ Chapter 1280 also requires all complications to be referred to a physician immediately.⁷

Chapter 1280 further requires that all applicants for midwife licensure must satisfy extensive educational training and examination requirements.⁸

Under Chapter 1280, the Medical Board of California⁹ may suspend or revoke a midwife's license for specified reasons, which include, but are not limited to: Unprofessional conduct, negligence, fraudulent advertising,

AFFAIRS, PREGNANT WOMEN AND NEWBORN INFANTS IN CALIFORNIA: A DEEPENING CRISIS IN HEALTH CARE 3 (1982) (explaining the need for improved perinatal care because of the high infant mortality rate in the U.S.); see also RAYMOND G. DEVRIES, *REGULATING BIRTH: MIDWIVES, MEDICINE, AND THE LAW* (1985) (explaining the licensing process for midwives and discussing the historical background of midwifery); Keith P. Russell, Book Review, 257 JAMA 252, 252-53 (1987) (reviewing and recommending DeVries' book on the licensing process for midwives); Charles Wolfson, *Midwives and Home Births: Social, Medical, and Legal Perspectives*, 37 HASTINGS L.J. 909, 949-51 (1986) (arguing the necessity of midwives and alternative childbirthing methods as a means for reducing cost, providing services for the poor, and avoiding underground home births); Kerry E. Reilley, Comment, *Midwifery in America: The Need for Uniform and Modernized State Law*, 20 SUFFOLK U. L. REV. 1117, 1123-25, 1142-46 (1986) (addressing the issue of uniform legislative recognition of midwifery through various licensing statutes); cf. Leigh v. Board of Registration in Nursing, 506 N.E.2d 91, 91, 94 (Mass. 1987) (stating that the government has an interest in protecting the safety of mothers and their unborn children, and therefore can regulate possible birthing methods); People v. Zimmerman, 63 N.E.2d 850, 850 (Ill. 1945) (proffering that midwifery can be a dangerous practice and, therefore, the government has a legitimate interest in regulating such activity). See generally Sabin Russell, *Midwives Win American Hearts*, S.F. CHRON., July 28, 1992, at A1 (describing a Marin County program designed to provide midwifery services to the poor in an attempt to provide cost-effective health care); CNN: *Bundles of Joy Cost More Than a Bundle* (CNN television broadcast, transcript #114-6, June 20, 1992) (explaining the cost difference between the average normal childbirth, at approximately \$6800, and midwife services, which generally start at \$900).

4. See CAL. BUS. & PROF. CODE § 2506(b) (enacted by Chapter 1280) (defining licensed midwife as a person who has been issued a license to practice midwifery under this article).

5. See CAL. WELF. & INST. CODE § 14134.5(b) (West 1991) (defining perinatal as the time from the establishment of pregnancy to one month following delivery); cf. CAL. HEALTH & SAFETY CODE § 289.2(a) (West 1990) (defining perinatal health system as all prenatal care, delivery care, postpartum care, and neonatal services).

6. CAL. BUS. & PROF. CODE § 2507(a),(b) (enacted by Chapter 1280); see *id.* § 2507(c) (enacted by Chapter 1280) (stating that supervision does not require physical presence of the physician); *id.* § 2507(d) (enacted by Chapter 1280) (providing that the ratio of licensed midwives to supervising physicians may not be greater than four to one). But see D.A. Sullivan & R. Weitz, *Obstacles to the Practice of Licensed Lay Midwifery*, SOC. SCI. MED., 1984, 19 at 1189-96 (discussing the unwillingness of some physicians to provide back-up for midwives). Several other states have adopted similar legislation in order to allow non-nurse midwives to obtain licenses. See, e.g., ALASKA STAT. §§ 08.65.050-.65.110 (1993 Supp.), ARK. CODE ANN. § 17-85-101 (Michie 1992), N.J. REV. STAT. §§ 45:10-1, 10-2, 10-5 (1991), TEX. REV. CIV. STAT. ANN. art. 4512i (West Supp. 1993), WASH. REV. CODE ANN. § 18.50.040 (West Supp. 1993) (setting forth the licensing procedures for midwives).

7. CAL. BUS. & PROF. CODE § 2507(b) (enacted by Chapter 1280).

8. *Id.* §§ 2512, 2512.5 (enacted by Chapter 1280); cf. People v. Hildy, 286 N.W. 819, 821 (Mich. 1939) (holding that any person wishing to practice midwifery must pass an examination).

9. See CAL. BUS. & PROF. CODE §§ 2001-2003 (West 1990) (setting forth the composition of the Medical Board of California, and defining the divisions of the Board).

drug use, and assisting at a criminal abortion.¹⁰ In addition, a violation of any provision of Chapter 1280 constitutes a misdemeanor.¹¹

Under existing law, certified nurse midwives¹² are able to obtain direct-reimbursement for perinatal services under every policy of disability insurance that offers coverage for such services.¹³ Furthermore, existing law provides that every nonprofit hospital plan contract that offers coverage for perinatal services must include a provision for direct-reimbursement to certified nurse midwives.¹⁴

Chapter 1280 provides that licensed midwives will be able to obtain the same direct-reimbursement privileges that are currently available for certified nurse midwives.¹⁵

APL

10. *Id.* § 2519 (enacted by Chapter 1280); *see id.* (setting forth the reasons for suspension or revocation).

11. *Id.* § 2521 (enacted by Chapter 1280).

12. *See id.* § 2506(c) (enacted by Chapter 1280) (defining certified nurse midwife as a person who has obtained a certificate to practice midwifery under California Business and Professions Code §§ 2746-2746.8).

13. CAL. INS. CODE § 10353(a) (West Supp. 1993).

14. *Id.* § 11512.07 (West Supp. 1993).

15. *Id.* § 10354(a)(1) (enacted by Chapter 1280); *id.* § 11512.07(a)(2) (amended by Chapter 1280); *cf.* N.M. STAT. ANN. § 59A-47-28.1 (Michie 1992) (providing that reimbursement to licensed midwives must not differ substantially from the same or similar services provided by other practitioners).

Health and Welfare; redevelopment reform

Health and Safety §§ 33012, 33032, 33338.1, 33348.5, 33353, 33353.1, 33353.3, 33353.4, 33353.5., 33353.6, 33353.7, 33354.4, 33413 (repealed); §§ 33333, 33413, 33426.5, 33444.5 33444.6, 33490, 33607.5, 33607.7 (new); §§ 33030, 33031, 33080.1, 33080.4, 33320.1, 33328.5, 33333.2, 33333.3, 33334.2, 33334.12, 33344.5, 33352, 33353.2, 33354.6, 33367, 33401, 33413, 33433, 33445, 33486, 33641, 33675, 33676, 33678 (amended); Revenue and Taxation Code §§ 7200.1, 7202.6 (repealed)
AB 1290 (Isenberg); 1993 STAT. Ch. 942

Existing law authorizes the establishment of redevelopment agencies in communities to address the effects of blight.¹ Chapter 942 reforms existing law by changing the definition of blighted area² and specifying limits on the time, debt, and scope of redevelopment projects.³

1. CAL. HEALTH & SAFETY CODE §§ 33000-33855 (West 1992 & Supp. 1993); *see id.* (setting out the provisions of the Community Redevelopment Law); *Id.* § 33030(a) (amended by Chapter 942) (noting the existence of blight and stating that its elimination serves the general welfare of the community and the state); *Id.* § 33100(a) (West 1992) (stating that each community will have a redevelopment agency); *Huntington Park Redev. Agency v. Martin*, 38 Cal. 3d 100, 108, 695 P.2d 220, 225, 211 Cal. Rptr. 133, 138 (1985) (stating that the policy behind community redevelopment law is to cure blighted areas); *Community Redev. Agency v. Goldman*, 61 Cal. 2d 21, 33, 389 P.2d 538, 546, 37 Cal. Rptr., 74, 82 (1964) (noting that curing blight leads to a reduction in ill health, transmission of disease, juvenile delinquency and crime).

2. *See* CAL. HEALTH & SAFETY CODE § 33030(b) (amended by Chapter 942) (stating that a blighted area is one that is predominately urbanized and suffers from physical and economic conditions which cannot be properly alleviated by either government or private enterprise without redevelopment); *id.* § 33031(a),(b) (amended by Chapter 942) (describing specific economic and physical conditions which cause blight); *id.* § 33320.1(a) (amended by Chapter 942) (defining project area as a predominately urbanized area in a community which is blighted and set for redevelopment); *id.* § 33320.1 (amended by Chapter 942) (defining predominately urbanized as meaning that not less than 80 percent of the land in the project area has been developed for urban use).

3. *Id.* § 33333.2(a) (amended by Chapter 942); *see id.* § 33333.2(a)(1)(A) (setting a deadline of 20 years or less for incurring the debts that the agency will pay with property tax increment revenues). This section applies to projects started after January 1, 1994 and allows the initial deadline to be extended by 30 years if significant blight still remains, however, the agency may only receive revenue for 45 years after the project's inception. *Id.*; *id.* § 33333.6(a)-(c) (setting a deadline of 20 years for the agency to incur the debts that will ultimately be paid with property tax increment revenue). This section applies to all projects which were started on or before December 31, 1993 and allows a 10 year extension for incurring debt if significant blight still remains after the initial deadline, however, revenue will only be provided for 40 years after the project's inception. *Id.*; *id.* § 33334.2(a) (amended by Chapter 942) (mandating that at least 20% of the revenue taken in by a project be used for the development of low and moderate income housing, absent a special showing that the 20% is not needed to adequately provide such housing to the affected area); *see also* §33391(a) (West 1992) (stating that a redevelopment agency may acquire property by eminent domain as long as the property falls within the definition of blighted area); *County of Santa Clara v. Redev. Agency*, 1993 Cal. App. Lexis 935, at *1 (1993) (stating that the law does not require time limits on the accumulation of debt for a redevelopment agency, but the agency is allowed to set such limits). The court nullified amendments by the city which allowed

Existing law requires a redevelopment agency to file an annual statement of indebtedness in order to receive property tax increment revenues.⁴ Chapter 942 requires redevelopment agencies to file a more detailed statement of indebtedness containing specified information regarding the financial status of the agency.⁵

Existing law requires a redevelopment agency to preserve a certain amount of low- and moderate-income housing units in a blighted area undergoing redevelopment.⁶ Existing law also permits the sale of owner-occupied replacement units for a price in excess of the amount otherwise permitted.⁷ Chapter 942 requires that the excess proceeds generated by

indebtedness to be incurred past the project's expiration date. *Id.*; see *Emmington v. Solano Redev. Agency*, 195 Cal. App. 3d 491, 496, 237 Cal. Rptr. 636, 639 (1987) (stating that blight must be at the foundation of an agency's attempt to acquire property by eminent domain); SENATE FLOOR, ANALYSIS OF AB 1290, at 2 (Sept. 2, 1993) (stating that the new definition of blight will lead to more stringent requirements for acquiring property by eminent domain); *A Diet for Redevelopment*, SACRAMENTO BEE, Aug 26, 1993, at B6 (stating that AB 1290 would effectively control the abuses of redevelopment agencies by setting definite time limits on the length of projects); Timothy L. Coyle, *Local Governments Hidden Millions*, S.F. CHRON., Sept. 6, 1993, at A19 (stating that redevelopment agencies keep a large amount of funds in reserve state-wide without putting the money into action). The author criticizes AB 1290 as counter-productive since it will actually speed up the process of debt incursion. *Id.*; Dennis Walters, *At Age 41, California Redevelopment Learns About Limits*, BOND BUYER, Oct. 12, 1992, at 4A (forecasting legislative reform due to real or perceived abuses by redevelopment agencies). Walters went on to note that redevelopment agencies are a prime target for legislative action since they usually carry large sums of funds on reserve. *Id.*

4. CAL. HEALTH & SAFETY CODE § 33675(b) (amended by Chapter 942); see *County of Santa Clara*, *supra* note 3, at *2 (providing a discussion on how tax increment financing is measured and allotted to redevelopment agencies); *Marek v. Napa Community Redev. Agency*, 46 Cal. 3d 1070, 1073, 761 P.2d 701, 702, 251 Cal. Rptr. 778, 780 (1988) (stating that in order to receive tax increment revenues, local agencies must file a statement of indebtedness on an annual basis which contains specified information regarding the financial status of the agency); *Amending Redevelopment Plan Provokes Referendum Effort*, CAL. PUB. FIN., Apr. 5, 1993, Vol. 3, No. 13 (noting that tax increment financing gives citizens the impression that funds are being automatically funneled into redevelopment agencies for projects over which the average citizen has little control or say).

5. CAL. HEALTH & SAFETY CODE § 33675(a)-(k) (amended by Chapter 942); see *id.* (noting that the statement of indebtedness must include a reconciliation statement which lists new debts, total debts, money available, and total payments); see also *id.* § 33080.1(a) (amended by Chapter 942) (requiring redevelopment agencies to file an annual audit report containing the financial status of the agency); *id.* § 33080.4(a)(6) (amended by Chapter 942) (requiring that the annual report also contain information about the status of housing for low- and moderate-income families and the elderly). See generally SENATE FLOOR, ANALYSIS OF AB 1290, at 3 (Sept. 2, 1993) (stating that Chapter 942 mandates more detailed information regarding indebtedness than was required by previous law).

6. CAL. HEALTH & SAFETY CODE § 33413(a) (amended by Chapter 942); see *id.* (stating that low and moderate income housing must be replaced when it is destroyed by redevelopment projects); *id.* § 33702(h) (West 1992) (defining low income housing as housing for persons of low income as that term is defined from time to time by a local public agency); *id.* § 33702(i) (West 1992) (defining middle-income housing as housing for people of middle-income as that term is defined from time to time by a local public agency); *Redev. Agency v. City of Berkeley*, 80 Cal. App. 3d 158, 170, 143 Cal. Rptr. 633, 639 (1992) (stating that in order for a redevelopment ordinance to be valid it must work to expand the supply of low and moderate income housing); *Marek*, 46 Cal. 3d at 1082, 761 P.2d at 708, 351 Cal. Rptr. at 785 (stating that one of the principal goals of community redevelopment law is to provide an adequate supply of low and moderate income housing).

7. CAL. HEALTH & SAFETY CODE § 33413(c)(2) (amended by Chapter 942).

such a sale be used for the construction of affordable housing units.⁸ Chapter 942 also authorizes redevelopment agencies to establish a program under which funds are loaned to owners or tenants for the rehabilitation of commercial buildings or structures within the project area.⁹

ELG

Health and Welfare; tuberculosis

Health and Safety Code § 3285 (repealed); §§ 3003, 3006, 3054, 3279.3, 3281, 3282, 3283, 3284, 3285, 3285.1, 3285.2, 3285.3, 3285.4 (new); § 3351 (amended).
AB 803 (Gotch); 1993 STAT. Ch. 676

Existing law requires the State Department of Health Services (DHS)¹ to quarantine persons infected with communicable diseases² when necessary to protect or preserve the public health.³ Chapter 676 designates the DHS as the lead agency for tuberculosis control and prevention activities.⁴

8. *Id.*

9. *Id.* § 33444.5 (enacted by Chapter 942).

1. CAL. HEALTH & SAFETY CODE § 100 (West 1990) (establishing the Department of Health Services (DHS)).

2. *See id.* §§ 3000-3507 (West 1990 & West Supp. 1993) (governing the prevention of communicable diseases).

3. *Id.* § 3051 (West 1990); *see id.* § 3050 (West 1990) (authorizing the DHS to maintain places of quarantine); *id.* § 3280 (West 1990) (declaring that the Legislature recognizes pulmonary tuberculosis to be dangerous to the public health); *In re Martin*, 83 Cal. App. 2d 164, 170, 188 P.2d 287, 291 (1948) (stating that health officers have discretion in choosing a place for quarantine, absent special provisions); 30 Op. Cal. Att'y Gen. 229, 230 (1957) (concluding that a health officer has the power to quarantine a person infected with tuberculosis in a local jail when it is necessary to enforce the quarantine and better suited facilities are unavailable); 4 Op. Cal. Att'y Gen. 146, 150 (1944) (stating that an infected person may not be quarantined in a jail unless other places are unavailable).

4. CAL. HEALTH & SAFETY CODE § 3279.3 (enacted by Chapter 676); *see id.* § 3279 (West 1990) (mandating a program for the control of tuberculosis); SENATE FLOOR ANALYSIS OF AB 803, at 2 (Aug. 31, 1993) (stating that this bill was designed to address some of the problems identified by a task force on tuberculosis elimination, consisting of the DHS, the California Tuberculosis Controllers Association, and the American Lung Association); *see also In re Culver*, 187 Cal. 437, 440, 202 P. 661, 663 (1921) (stating that the State Board of Health has the power to quarantine persons who have come in contact with carriers of contagious diseases); *County of Sacramento v. Chambers*, 33 Cal. App. 142, 147, 164 P. 613, 615 (1917) (holding that the tuberculosis control program is a valid exercise of the state's police power and is not unconstitutional); 4 Op. Cal. Att'y Gen. 146, 148 (1944) (concluding that quarantines were for the purpose of protecting the general public as well as the infected person). *See generally* Lawrence O. Gostin, *Controlling the Resurgent Tuberculosis*

Chapter 676 prohibits a health facility,⁵ local detention facility,⁶ or state correctional institution⁷ from releasing or transferring a person known or reasonably suspected to have active tuberculosis⁸ until the Local Health Officer (Officer)⁹ is given a written individualized treatment plan.¹⁰ Chapter 676 requires Health Care Providers (Providers) treating a person for active tuberculosis, persons in charge of a health facility, and persons in charge of a clinic providing outpatient treatment for active tuberculosis to report to the Officer when there are reasonable grounds to believe that a person has tuberculosis and when a person ceases treatment.¹¹ Under Chapter 676, Providers must maintain a written record

Epidemic; A 50-State Survey of TB Statutes and Proposals for Reform, 269 JAMA 255, 256-57 (1993) (comparing the current statutes in all 50 states, showing how states are attempting to control the spread of tuberculosis); Michael Specter, *Tuberculosis: A Killer Returns*, N.Y. TIMES, Oct. 14, 1992, at A1 (detailing the history of how society has been dealing with tuberculosis patients). There has been a global resurgence of tuberculosis, being the most common infection related to HIV infections, and one third of the world's population is infected with the disease. Marsha F. Goldsmith, *New Reports Make Recommendations, Ask for Resources to Stem TB Epidemic*, 269 JAMA 187, 188 (1993). There has also been an increase in the rate of multidrug-resistant tuberculosis, which is more difficult and costly to treat. Gostin, *supra*, at 255.

5. See CAL. HEALTH & SAFETY CODE § 1250 (West Supp. 1993) (defining health facility as a place used for the diagnosis, care, prevention, and treatment of physical or mental illness, including convalescence and rehabilitation and care during and after pregnancy, to which persons are admitted for a 24-hour stay or longer, and listing and defining different types of health facilities); *id.* § 1250.2 (West Supp. 1993) (including psychiatric health facilities as a type of health facility); *id.* § 1250.3 (West 1990) (including chemical dependency recovery hospitals as a type of health facility).

6. See CAL. PENAL CODE § 6031.4 (West Supp. 1993) (defining a local detention facility as any city, county, or regional facility used for the 24 hour confinement of adults or minors, regardless of length of confinement, and any adult detention facility that holds local prisoners under contract on behalf of cities or counties, but does not include rooms used for interviews, interrogations, or investigations).

7. See CAL. HEALTH & SAFETY CODE § 3006(g) (enacted by Chapter 676) (defining a state correctional institution as a prison, institution, or other facility under the jurisdiction of the Department of Corrections or the Department of Youth Authority).

8. See *id.* § 3003 (enacted by Chapter 676) (defining "active tuberculosis disease" to mean when either a person has tested positive for tuberculosis and has not completed the appropriate prescribed course of medication for tuberculosis or when there is sufficient evidence to establish a diagnosis of tuberculosis).

9. See *id.* § 3000 (West 1990) (defining health officer); *id.* § 3110 (West 1990) (stating that health officers have a duty to prevent the spread of disease); *id.* § 3111.5 (West 1990) (listing the minimum qualifications health officers are to possess in counties having a population of 5,000,000 or more); see also *Derrick v. Ontario Community Hosp.*, 47 Cal. App. 3d 145, 152, 120 Cal. Rptr. 566, 570 (1975) (stating that health officers have considerable discretion in deciding how to carry out their duties and interpreting California Health and Safety Code §§ 3110 and 3125 as having been enacted to protect the public health).

10. CAL. HEALTH & SAFETY CODE § 3281 (enacted by Chapter 676); see *id.* § 3282 (enacted by Chapter 676) (specifying that the written treatment plan must include the name of the medical provider, the address of the person, and any other pertinent information required by the Officer).

11. *Id.* § 3282 (enacted by Chapter 676); see *id.* § 3125 (West 1990) (imposing a duty on physicians to notify health officer of persons having communicable diseases); *Derrick*, 47 Cal. App. 3d at 152, 120 Cal. Rptr. at 570 (interpreting California Health and Safety Code § 3125 to apply to hospitals as well); 58 Op. Cal. Att'y Gen. 904 (1975) (concluding that physicians are not liable for medical malpractice for the breach of the doctor-patient confidentiality relationship when they report that a patient is infected with a communicable disease); see also CAL. HEALTH & SAFETY CODE § 3282 (enacted by Chapter 676) (allowing Providers to conclude that a patient has ceased treatment when the patient fails to keep an appointment, relocates without transferring care,

of the patient's adherence to the individual treatment plan.¹² The Provider must then examine all the patient's household contacts and report the results of any tuberculosis related examination when requested by the Officer.¹³ Similarly, Chapter 676 requires Officers to notify the medical officer of a parole region when there are reasonable grounds to believe that a parolee has active tuberculosis disease and when the parolee ceases treatment.¹⁴

Chapter 676 directs Officers to use every available means to investigate all suspected cases of active tuberculosis disease within the Officer's jurisdiction.¹⁵ Chapter 676 authorizes an Officer to order examinations¹⁶ of persons for whom the Officer has reasonable grounds to believe are at heightened risk of tuberculosis exposure,¹⁷ except those incarcerated in a state correctional institution.¹⁸

Under Chapter 676, when an Officer determines that the public health is endangered by exposure to a person known or suspected of having active tuberculosis disease, the Officer may issue a court enforceable order as necessary to protect the public health.¹⁹ While Chapter 676 lists a number of orders that an Officer may issue,²⁰ an Officer is not limited to giving only those orders.²¹ Chapter 676 permits an Officer to require a

or discontinues care).

12. CAL. HEALTH & SAFETY CODE § 3282 (enacted by Chapter 676).

13. *Id.* § 3283 (enacted by Chapter 676).

14. *Id.* § 3282 (enacted by Chapter 676).

15. *Id.* § 3285 (enacted by Chapter 676).

16. *See id.* § 3006(f) (enacted by Chapter 676) (defining an examination for tuberculosis infection to mean conducting tuberculosis specific tests, including Mantoux tuberculin skin tests, laboratory examination, and X-rays, as recommended by the most recent guidelines of either the local health officer, the DHS, the Centers for Disease Control and Prevention, or the American Thoracic Society).

17. *See id.* § 3006(c) (enacted by Chapter 676) (defining heightened risk of tuberculosis exposure to mean likely exposure to persons with infectious tuberculosis disease).

18. *Id.* § 3284(a) (enacted by Chapter 676). *But see id.* § 3286 (West 1990) (providing that persons may be exempt from such examinations for religious reasons); Gostin, *supra* note 4, at 257 (stating that Oklahoma and Maryland also provide exemptions from examinations on the grounds of religion). A health officer may order medical examinations to diagnose persons suspected of having tuberculosis in 36 states and the District of Columbia. *Id.* at 256. In most states, there must be "probable cause" or a "reasonable belief" that a person is infected before such an examination can be made, but in Alaska, Indiana, Tennessee, Texas, and Washington, there must be a "serious and present danger" or it must be "necessary to protect the public health" before an examination can be made. *Id.* at 256, 256 n.37. In most states, such an examination can be ordered without judicial approval. *Id.* at 256.

19. CAL. HEALTH & SAFETY CODE § 3285 (enacted by Chapter 676); *see id.* (specifying what the order must include and the procedures involved in serving the order).

20. *See id.* § 3285(a)-(g) (enacted by Chapter 676) (listing possible orders that an Officer may issue).

21. *Id.* § 3285 (enacted by Chapter 676).

person to complete an appropriate prescribed course of medication²² and to follow required contagion precautions, if necessary.²³ Chapter 676 also allows an Officer to order a person having infectious tuberculosis²⁴ to be excluded from attendance at work, school, or any place where others cannot be protected from the spread of the disease,²⁵ but such an exclusion may not continue if the person has completed an appropriate prescribed course of medication.²⁶

In cases involving a person who is unable or unwilling to submit to an examination, Chapter 676 authorizes the Officer to issue either of the following orders: (1) An order to remove or to admit the person in a health facility for a tuberculosis examination;²⁷ or (2) an order to follow a course of directly observed therapy.²⁸ When a person is detained for examination purposes, Chapter 676 prohibits a detention beyond the minimum period of time required for such an examination.²⁹

Chapter 676 further authorizes an Officer to remove a person to a health facility when the person has or is substantially likely to have infectious tuberculosis disease,³⁰ and the Officer finds that the person is substantially likely to transmit tuberculosis.³¹ In this case, Chapter 676

22. See *id.* § 3006(d) (enacted by Chapter 676) (defining "the appropriate prescribed course of medication for tuberculosis disease" to mean the course recommended by the most recent guidelines of the DHS, the Centers for Disease Control and Prevention, or the American Thoracic Society).

23. *Id.* § 3285(b) (enacted by Chapter 676). But see *id.* (prohibiting the forcible administration of medication).

24. See *id.* § 3006(a) (enacted by Chapter 676) (defining infectious tuberculosis disease as active or suspected active tuberculosis disease in an infectious state).

25. See *id.* § 3285(f) (enacted by Chapter 676); *id.* § 3118 (West 1990) (prohibiting a quarantined person from attending school).

26. *Id.* § 3285(c) (enacted by Chapter 676); see *Jones v. Czapkay*, 182 Cal. App. 2d 192, 202, 6 Cal. Rptr. 182, 188 (1960) (interpreting the power of health officers to quarantine infected persons to be discretionary rather than mandatory and holding that a health officer is not liable to one who contracted a communicable disease from a quarantined person when the health officer failed to insure that the quarantine orders were strictly followed).

27. CAL. HEALTH & SAFETY CODE § 3285(a) (enacted by Chapter 676); see *id.* (providing that the person to be examined may choose the physician to perform the examination). But see *id.* § 3285(i) (enacted by Chapter 676) (providing that private hospitals or private treatment facilities are not required to accept a patient without a payment source).

28. *Id.* § 3285(c) (enacted by Chapter 676); see *id.* § 3006(e) (enacted by Chapter 676) (defining directly observed therapy to mean the appropriately prescribed course of treatment for tuberculosis disease in which the prescribed medications are administered to the person under direct supervision). But see *id.* (prohibiting the forcible administration of medication, even on persons unable or unwilling to submit to an examination).

29. *Id.* § 3285.3(a) (enacted by Chapter 676).

30. See *id.* § 3006(a) (enacted by Chapter 676) (defining infectious tuberculosis disease to mean active or suspected active tuberculosis disease in an infectious state).

31. *Id.* § 3285(d) (enacted by Chapter 676); see *In re Martin*, 83 Cal. App. 2d 164, 168-69, 188 P.2d 287, 290 (1948) (holding that the proof required to justify a quarantine is an inquiry as to the existence of reasonable cause pending further investigation); *In re Arata*, 52 Cal. App. 380, 383, 198 P. 814, 816 (1921) (holding that

only permits the detention until the person ceases to be infectious or until the Officer determines that the person can be adequately separated from others to prevent the transmission of tuberculosis after the person's release.³² Chapter 676 also authorizes such a removal if the person has or has been reported to have active tuberculosis disease, if the Officer has not received a subsequent report that the person completed an appropriate prescribed course of medication, and if there is a substantial likelihood, based on the person's behavior,³³ that the person cannot be relied upon to complete an appropriate prescribed course of medication for tuberculosis.³⁴

Chapter 676 permits an Officer to issue an order detaining a person to a hospital without a prior court order, unless the person has requested a release.³⁵ When a release has been requested, the Officer must apply for a court order authorizing the detention of the infected person within seventy-two hours after the request.³⁶ Chapter 676 prohibits the detention of a person for more than sixty days without a court order and requires that the Officer seek a court review of the detention every ninety days from the initial order.³⁷

Chapter 676 mandates that any order by an Officer must state the legal authority for issuing the order,³⁸ state the person's circumstances or behavior which constitutes the basis for issuing the order,³⁹ and list the less restrictive treatment alternatives that were attempted and were unsuccessful or that were considered and rejected.⁴⁰ An order for the detention of a person must include the purpose of the detention⁴¹ and

a reasonable ground, not a mere suspicion, must exist for a belief that a person is infected with a contagious disease before a quarantine order will be justified); *In re Shepard*, 51 Cal. App. 49, 51, 195 P. 1077, 1077 (1921) (holding that, in order to justify a quarantine, more than a mere suspicion is required for there to be a "reason to believe" that a person is infected with a communicable disease).

32. CAL. HEALTH & SAFETY CODE § 3285.3(b) (enacted by Chapter 676).

33. *See id.* § 3285(e)(2) (enacted by Chapter 676) (stating that the person's behavior may include, but is not limited to, refusal or failure to take medication, to keep appointments or treatment, to complete treatment, or a disregard for contagion precautions).

34. *Id.*; *see* SENATE FLOOR ANALYSIS OF AB 803, at 4 (Aug. 31, 1993) (reporting supporters' contention that most patients who require isolation have a history of demonstrated non-compliance with Officers' orders or are infected with a drug resistant strain).

35. CAL. HEALTH & SAFETY CODE § 3285.1(a) (enacted by Chapter 676); *see In re Johnson*, 40 Cal. App. 242, 245, 180 P. 644, 645 (1919) (holding that no court hearing is required before a person is quarantined).

36. CAL. HEALTH & SAFETY CODE § 3285.1(a) (enacted by Chapter 676).

37. *Id.*

38. *Id.* § 3285.2 (a)(1) (enacted by Chapter 676); *see id.* (providing that the Officer must state the sections of state law or regulations under which the order is issued).

39. *Id.* § 3285.2 (a)(2) (enacted by Chapter 676).

40. *Id.* § 3285.2 (a)(3) (enacted by Chapter 676).

41. *Id.* § 3285.2 (b)(1) (enacted by Chapter 676).

inform the person of the right to request a release,⁴² of the requirement that the Officer must obtain a court order in order to continue the detention after a certain period,⁴³ and of the person's right to counsel.⁴⁴ Chapter 676 requires that all such orders be accompanied by a separate notice informing the person being detained of the right to request a release,⁴⁵ of the right to counsel,⁴⁶ and of the right to indicate who is to be notified of the detention.⁴⁷ Furthermore, Chapter 676 requires that language interpreters and persons skilled in communicating to vision and hearing impaired persons be provided when necessary for the purposes of implementing these efforts.⁴⁸

Existing law provides that a violation of an Officer's order is a misdemeanor⁴⁹ and specifies that upon conviction for such a violation, the court may order the person to be confined for a maximum of six months in addition to any other penalties imposed by law.⁵⁰ Chapter 676 increases the maximum penalty to one year of confinement.⁵¹

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Health and Welfare; workplace safety—injury prevention programs

Labor Code § 6401.7 (amended).

AB 2380 (Vasconcellos); 1993 STAT. Ch. 929

Labor Code § 6319.3 (new); Labor Code § 6427 (amended).

AB 395 (Hannigan); 1993 STAT. Ch. 928

42. *Id.* § 3285.2(b)(2) (enacted by Chapter 676); *see id.* (providing that the person may not be detained more than five days after such a request).

43. *Id.* § 3285.2(b)(3) (enacted by Chapter 676).

44. *Id.* § 3285.2(b)(4) (enacted by Chapter 676); *see id.* (specifying that the person may arrange to be represented by counsel or have counsel provided).

45. *Id.* § 3285.2(b)(5)(A) (enacted by Chapter 676).

46. *Id.* § 3285.2(b)(5)(B) (enacted by Chapter 676).

47. *Id.* § 3285.2(b)(5)(C) (enacted by Chapter 676); *see id.* (requiring the Officer to provide notice to the indicated people of the detention at the detained person's request).

48. *Id.* § 3285.4(a) (enacted by Chapter 676).

49. *See* CAL. PENAL CODE § 17(b) (West Supp. 1993) (defining misdemeanor); 36 Op. Cal. Att'y Gen. 28, 28 (1960) (concluding that a person may be compelled by court quarantine order to submit to an examination for a contagious disease and would be guilty of a misdemeanor for failing to do so).

50. 1965 Cal. Stat. ch. 1552, sec. 2, at 3646 (amending CAL. HEALTH & SAFETY CODE § 3351).

51. *Id.*

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Existing law requires every employer¹ to establish, implement, and maintain an effective written injury prevention program² which corrects unsafe and unhealthy working conditions, training employees in safe work practices,³ and keeping appropriate records⁴ on the implementation and maintenance of the program.⁵ Chapter 928 provides that there will be no civil penalties assessed against new employers for violation of the accident prevention program requirement⁶ during the first year after the establishment of the business, provided that the employer has made a good faith effort to comply with the prevention program and has not committed a serious,⁷ willful,⁸ or repeated⁹ violation of the program.¹⁰

1. See CAL. LAB. CODE § 3300 (West 1989) (defining employer as every person including any public service corporation which has any natural person in service); *Elder v. Pacific Tel. & Tel. Co.*, 66 Cal. App. 3d 650, 663, 136 Cal. Rptr. 203, 209 (1977) (defining employer as any person having direction, management, control, or custody of any employment, place of employment, or employee).

2. See CAL. LAB. CODE § 6401.7(a) (amended by Chapter 929) (defining injury prevention program as a written employment safety program which includes the employer's system for identifying workplace hazards, the methods for correcting unsafe or unhealthy conditions in a timely manner, a safety training program for employees, a system for communication with employees to encourage employers to inform employees of hazards, and a system to ensure compliance with safe and healthy work practices).

3. See *id.* § 6401.7(c) (amended by Chapter 929) (requiring that beginning January 1, 1994, an employer, who is in the construction industry and is required to be licensed under the Business and Professions Code, may use employee training provided by a construction industry occupational safety and health program, and requiring only that an employer to train employees on any hazards specific to an employee's job duties).

4. See *id.* § 6401.7(d) (amended by Chapter 929) (allowing employers in the construction industry to use records relating to the employee training in connection with an occupational safety and health training program, and requiring only that employers keep records of steps taken to implement and maintain the program with respect to hazards specific to an employee's job duties).

5. CAL. LAB. CODE § 6401.7 (amended by Chapter 929); see *id.* § 6400 (West 1989) (requiring employers to furnish safe and healthful employment and places of employment); *id.* § 6401 (West 1989) (requiring that an employer provide safety devices and adopt safe practices at the worksite); *id.* § 6402 (West 1989) (providing that an employer may not require nor permit an employee to be in an unsafe or unhealthful workplace); *Bonner v. Workers' Compensation Appeals Bd.*, 225 Cal. App. 3d 1023, 1034, 275 Cal. Rptr. 337, 343 (1990) (noting that the employer has a duty to maintain a safe workplace, including the duty to inspect, discover and correct dangerous conditions, and give adequate warning of such conditions). See generally *Review of Selected 1989 California Legislation*, 21 PAC. L.J. 337, 505 (1990) (discussing 1989 legislation regarding injury prevention programs); cf. N.Y. LAB. LAW § 884 (McKinney 1988) (calling only for voluntary compliance with occupational safety and health training programs by employers).

6. See CAL. LAB. CODE § 6401.7(a) (amended by Chapter 929) (requiring every employer to establish, implement and maintain an effective injury prevention program).

7. See *id.* § 6432 (West Supp. 1993) (defining serious violation as violations where there is a substantial probability that death or serious harm could result from exposure to a condition); *id.* § 6428 (West Supp. 1993) (highlighting civil penalties for serious violations of Occupational Safety & Health Act (OSHA) standards); *Lusardi Const. Co. v. California OSHA Appeals Bd.*, 1 Cal. App. 4th 639, 646-47, 2 Cal. Rptr. 2d 297, 302 (1991) (finding that the contractor committed a serious violation of OSHA standards by allowing employees to work 24 feet above the ground without safety belts, creating a substantial probability of injuries resulting in death or serious physical harm); *Chick v. Industrial Accident Comm'n*, 107 Cal. App. 2d 292, 296-97, 237 P.2d 8, 9-10 (1951) (holding that failing to furnish a safe place of employment was a serious and willful violation because the employer knew or should have known of the dangers to life and safety by overloading a platform with materials and employees).

Chapter 929 also requires the Division of Occupational Safety and Health (OSHA)¹¹ to prepare a model injury and illness prevention program for non-high-hazard¹² and seasonal or intermittent employers.¹³ An employer in these industries who adopts and implements the model plan in good faith shall be deemed to have complied with the injury prevention program.¹⁴

Existing law provides that a penalty of up to \$7000 can be levied against employers who violate Health and Safety Codes.¹⁵ Prior law provided that an employer who lacked an operative injury prevention program could not abate civil penalties from OSHA violations by showing good faith or previous safety records.¹⁶

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8. See CAL. PENAL CODE § 7 (West 1988) (defining willful as the intent with which an act is done or omitted, with a purpose or willingness to commit an act, or make an omission; but not requiring any intent to violate the law, injure another, or acquire any advantage); *McLaughlin v. Union Oil Co.*, 869 F.2d 1039, 1047 (7th Cir. 1989) (finding that an oil company's failure to inspect for hydrogen stress corrosion cracking and to supply employee fire fighters with fireproof clothing were "serious," rather than "willful" violations of OSHA standards); *Division of Occupational Safety and Health Comm'n v. Ball & Brosamer, Inc.*, 837 P.2d 174, 177 (Ariz. Ct. App. 1992) (defining willful violation as one involving voluntary action by an employer done either with an intentional disregard or plain indifference to the governing safety regulations).

9. See CAL. LAB. CODE § 6429 (West Supp. 1993) (setting forth the civil penalties for willful or repeated violations of OSHA standards).

10. *Id.* § 6319.3(a)-(b) (enacted by Chapter 928).

11. See *id.* § 6300 (West 1989) (stating that the purpose of the California Occupational Safety and Health Act of 1973 is to assure the safe and healthful working conditions for all workers in California); *id.* § 6307 (West 1989) (defining the power, jurisdiction, and supervisory capacity of the Division of Occupational Safety and Health).

12. See CAL. LAB. CODE § 6401.7(j)(2) (enacted by Chapter 929) (enumerating existing non-high-hazard industries and requiring OSHA to establish a complete list of non-high-hazard industries by June 30, 1994).

13. *Id.* § 6401.7(j)(1)-(3) (enacted by Chapter 929); see *id.* § 6401.7(j)(1) (enacted by Chapter 929) (requiring that copies of the model program be made available to employers, upon request, for posting in the workplace).

14. *Id.* § 6401.7(j)(3) (enacted by Chapter 929).

15. *Id.* § 6427 (amended by Chapter 928). See generally 58 Op. Cal. Att'y Gen. 174, 176-77 (1975) (discussing California OSHA enforcement procedures).

16. 1991 Legis. Serv. ch. 599, sec. 4, at 2414 (amending CAL. LAB. CODE § 6427).